Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia v Md Jaafar bin Abdul Carrim & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R3-25-34 OF 1997
NIK HASHIM J
16 JANUARY 1998

Civil Procedure *— Contempt of court — Order of committal, application for — Committal proceedings — Breach of stay order — Statement accompanying notice of motion did not contain sufficient information as to the alleged breach of stay order — Whether statement defective — Whether deficiencies in statement were fatal — Whether affidavit could supply grounds required to be set out in statement — Rules of the High Court 1980 O 52 rr 2(2) & 3(3)*

Civil Procedure *— Contempt of court — Breach of court order — Stay order — Stay order ambiguous — Whether there had been breach of stay order*

Civil Procedure *— Contempt of court — Breach of court order — Stay order — Whether stay order punishable by contempt — Rules of the High Court 1980 O 45 r 5(1)(ii) & O 52 r 1(2)(a)(i)*

The Industrial Court had awarded that the second respondent be allowed to implement the Rota Work System ('the system') in its factory. The applicant filed an application for an order of certiorari to quash the award. The applicant obtained a stay order of the award pending appeal before the Court of Appeal. The present application was for an order of committal against the first respondent as the managing director of the second respondent for disobedience of the stay order. The respondents objected to the application on the grounds that: (i) the statement filed by the applicant failed to set out sufficiently particulars of the alleged contempt with the result that the respondent did not have enough information to meet the charge; (ii) the applicant failed to identify the proceedings in which the stay order was given; (iii) the stay order was ambiguous in that it did not direct what had to be done; (iv) at the time the stay order was made, the system had already been implemented in several departments in the factory and the stay order did not require the respondents to reverse what had already been done in the past; and (v) a stay order was not punishable by contempt.

Held, dismissing the application:

(1) In order to find the first respondent guilty of contempt, the applicant must comply with the procedural rules strictly and prove that the first respondent had breached the stay order beyond reasonable doubt. Any defect in procedure or doubt in the proof is fatal. The grounds on which an order of committal is sought must be stated in the statement with sufficient particularity to enable the person alleged to be in contempt to meet the charge. The nature of the contempt must be identified

and spelt out precisely. The person alleged to be in contempt must know what exactly he is said to have done or omitted to do which constitute a contempt of court.

In this case, the applicant had failed to comply strictly with O 52 r 2(2) read together with O 52 r 3(3) of the Rules of the High Court 1980. The statement filed by the applicant failed to set out sufficient grounds of the alleged contempt and the information in the statement was devoid of details in that the applicant had failed to identify precisely the proceedings in which the stay order was given. The applicant also did not state what the stay order required the second respondent to do, how the stay was to have been implemented and how it failed to obey. Neither the applicant said how the first respondent was responsible or what he did or did not do or what he was required or not required to do under the stay order. These details were important for the first respondent to meet the charge. Failure to state such details in full in the statement would prejudice the first respondent in his defence. Deficiencies in the statement could not be regarded as cured by reason of references in the notice of motion and the statement to affidavits attached to or accompanying the notice and the statement. Therefore in this case, the applicant had failed to establish the application for committal against the first respondent beyond reasonable doubt (see pp 249I, 250A–C, G–I, 251A and 252A–B).

(2) The stay order was ambiguous and uncertain in its terms. It did not direct what had to be done. Thus, there had been no breach of the stay order by the respondents which had been proved to have occurred in this case. The stay order also gave rise to more than one meaning. Hence it was doubtful. To be effective, the terms of the stay order must be precise and unambiguous (see p 251B–C, F).

(3) Under O 45 r 5(1)(ii) and O 52 r 1(2)(a)(i), any director of a body corporate may be committed for contempt of court which is committed in connection with 'any proceedings' before the High Court and 'any proceedings' here includes a stay order proceeding and therefore, a stay order is also punishable by contempt (see p 251I).

[Bahasa Malaysia summary

Mahkamah Perusahaan telah mengawardkan bahawa penentang kedua dibenarkan melaksanakan Sistem Jadual Kerja ('sistem tersebut') di kilangnya. Pemohon memfailkan satu permohonan untuk perintah certiorari bagi membatalkan award tersebut. Pemohon memperolehi satu perintah penggantungan atas award tersebut sementara menunggu penyelesaian rayuan di hadapan Mahkamah Rayuan. Permohonan ini adalah untuk perintah committal terhadap penentang pertama sebagai pengarah urusan penentang kedua kerana tidak mematuhi perintah penggantungan. Penentang-penentang

membantah terhadap permohonan atas alasan bahawa: (i) pernyataan yang difailkan oleh pemohon gagal menyatakan dengan secukupnya butir-butir tentang penghinaan yang dikatakan dengan keputusan bahawa penentang tidak mempunyai maklumat yang mencukupi bagi memenuhi pertuduhan; (ii) pemohon gagal mengenal pasti prosiding di mana perintah penggantungan diberikan; (iii) perintah penggantungan adalah taksa dalam ertikata bahawa ia tidak mengarahkan apa yang harus dilakukan; (iv) pada masa perintah penggantungan dibuat, sistem tersebut telah pun dilaksanakan di beberapa bahagian kilang dan perintah penggantungan tidak menghendaki penentang-penentang mengakas apa yang sudah pun dilakukan; dan (v) satu perintah penggantungan tidak boleh dihukum melalui penghinaan.

Diputuskan, menolak permohonan:

(1) Bagi mendapati penentang pertama bersalah atas penghinaan, pemohon mesti mematuhi kaedah-kaedah prosedur secara ketat dan membuktikan bahawa penentang pertama telah melanggar perintah penggantungan melampaui keraguan munasabah. Sebarang kecacatan dalam prosedur atau keraguan dalam bukti adalah padah. Alasan-alasan atas mana satu perintah komital dipohon mestilah dinyatakan dalam pernyataan dengan butir-butir yang mencukupi bagi membolehkan orang yang dikatakan menghina memenuhi pertuduhan. Sifat penghinaan mestilah dikenal pasti dan dinyatakan dengan jitunya. Orang yang dikatakan menghina mestilah tahu dengan tepatnya apakah dia dikatakan telah buat atau tertinggal buat yang membentuk penghinaan mahkamah.

Dalam kes ini, pemohon telah gagal mematuhi secara ketat A 52 k 2(2) dibaca bersama dengan A 52 k 3(3) Kaedah-Kaedah Mahkamah Tinggi 1980. Pernyataan yang difailkan oleh pemohon gagal menyatakan alasan yang mencukupi atas penghinaan yang dikatakan dan maklumat dalam pernyataan kekurangan butir dalam ertikata bahawa pemohon telah gagal mengenal pasti apakah prosiding di mana perintah penggantungan diberikan. Pemohon juga tidak menyatakan apakah perintah penggantungan menghendaki penentang kedua lakukan, bagaimana penggantungan hendak dilaksanakan dan bagaimana ia gagal mematuhi. Pemohon tidak juga mengatakan bagaimana penentang pertama bertanggungjawab atau apakah yang dilakukan atau tidak dilakukannya atau apakah dia dikehendaki atau tidak dikehendaki lakukan di bawah perintah penggantungan. Butir-butir ini adalah penting untuk penentang pertama memenuhi pertuduhan. Kegagalan untuk menyatakan butir demikian dengan sepenuhnya dalam pernyataan akan memudaratkan penentang pertama dalam pembelaannya. Kecacatan dalam pernyataan tidak boleh dianggap telah dipulihkan disebabkan rujukan dalam notis usul dan pernyataan kepada afidavit yang terlampir kepada atau

mengiringi notis dan pernyataan tersebut. Maka dalam kes ini, pemohon telah gagal membuktikan permohonan untuk komital terhadap penentang pertama melampaui keraguan munasabah (lihat ms 249I, 250A–C, G–I, 251A dan 252A–B).

(2) Perintah penggantungan adalah taksa dan tidak pasti dalam termanya. Ia tidak mengarahkan apa yang harus dilakukan. Justeru itu, tiada kemungkiran perintah penggantungan oleh penentang-penentang yang dibuktikan telah berlaku dalam kes ini. Perintah penggantungan juga membangkitkan lebih daripada satu makna. Maka ia adalah diragui. Untuk berkesan, terma perintah penggantungan mestilah tepat dan tidak taksa (lihat ms 251B–C, F).

(3) Di bawah A 45 k 5(1)(ii) dan A 52 k 1(2)(a)(i), mana-mana pengarah sebuah perbadanan korporat boleh dihukum untuk penghinaan mahkamah yang dilakukan berhubung dengan 'mana-mana prosiding' di hadapan Mahkamah Tinggi dan 'mana-mana prosiding' di sini termasuk satu perintah penggantungan dan maka, satu perintah penggantungan juga boleh dihukum oleh penghinaan (lihat ms 251I).]

Notes

For cases on contempt of court, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 788–837.

Cases referred to

B (JA) (An Infant), Re [1965] 1 Ch 1112 (refd)
Chiltern District Council v Keane [1985] 2 All ER 118 (refd)
Harmsworth v Harmsworth [1987] 3 All ER 816 (refd)
Iberian Trust Ltd v Founders Trust and Investment Co Ltd [1932] 2 KB 87 (refd)
McIlraith v Grady [1968] 1 QB 468 (refd)
Ministry of Foreign Affairs, Trade and Industry v Vehicles and supplies Ltd & Anor [1991] 1 WLR 550 (refd)
United Steel Workers of America, Local 663 v Anaconda Co (Canada) Ltd (1969) 3 DLR (3rd) 577 (refd)
Sykt M Mohamed v Mahindapal Singh & Ors [1991] 2 MLJ 112 (refd)
Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal [1995] 3 MLJ 549 (refd)

Legislation referred to

Industrial Relations Act 1967 s 26(1)
Rules of the High Court 1980 O 45 r 5(1)(ii), O 52 rr 1(2)(a)(i), 2(2), 3(3)

LG Seah (*Lobo & Associates*) for the applicant.
Rabindra S Nathan (*Shearn Delamore & Co*) for the respondents.

Cur Adv Vult A

Nik Hashim J: This is an application by notice of motion under O 52 of the Rules of the High Court 1980 ('the RHC') by Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia ('the union') to commit the first respondent Md Jafar bin Abdul Carrim, the managing director of the second respondent, the DMIB Bhd, to prison for alleged contempt of a stay order of the proceedings made on 7 May 1996 by the order of Abdul Kadir Musa JC (as he then was) vide Kuala Lumpur High Court Originating Motion No R1–25–30–96. The notice of motion was filed pursuant to leave of this court granted on 15 July 1997. B

By way of background, the case leading to the present proceeding is that a trade dispute between the union and the second respondent was referred to the Industrial Court for an award under s 26(1) of the Industrial Relations Act 1967 ('the Act'). The dispute was over the Rota Work System which the second respondent proposed to implement in its factory. The Industrial Court subsequently handed down its decision and awarded that the second respondent be allowed to implement the system. Dissatisfied with the award, the union filed an application for an order of certiorari to quash the award. In the meanwhile, the union obtained a stay order of the award, the subject matter of the present application. It is to be noted that this court had on 3 September 1997 dismissed the union's application for certiorari, which is now pending appeal before the Court of Appeal. C D E

The present application is for an order of committal against the first respondent as the managing director of the second respondent for disobedience of the stay order. The relevant portion of the stay order reads as follows:

> ... DAN SELANJUTNYA ADALAH DIPERINTAHKAN bahawa semua tindakan *selanjutnya* dan/atau prosiding oleh responden atau Mahkamah Perusahaan *selanjutnya* untuk menguatkuasakan atau melaksanakan Award No 65 Tahun 1996 digantung sementara menunggu keputusan terakhir permohonan ini ... . (Emphasis added). F

Encik Rabindra S Nathan, counsel for the respondents raised his objections on two grounds: procedural and technical aspects and substantive defences. G

On procedural and technical aspects, the following are the summary of the alleged principal defects:

(1) The statement filed by the applicant fails to set out any or sufficient particulars of the alleged contempt so much so that the first respondent does not have enough information to meet the charge. The applicant has therefore failed to comply with O 52 r 2(2) of the RHC. H

(2) The applicant has failed to identify the proceedings in which the stay order was given. Therefore, the notice of motion and the statement are defective. I

(3) The stay order dated 7 May 1996 did not in unambiguous terms direct what had to be done.

A On the substantive defences, the defects are:

(1) At the time the stay order was made, the Rota System had already been implemented in several departments in the second respondent's factory. The stay order gives rise to mean that the second respondent is not required to reverse what has already being done in the past, but
B merely to preserve the status quo. Therefore, there has been no breach of the stay order which has been proved to have occurred.

(2) A stay order is not punishable by contempt.

Cik LG Seah for the applicant argued that the applicant had identified the term of the breach that is, the stay of the execution of the award. Since the
C award empowered the second respondent to operate the Rota System, it follows that by the stay order the system was to be discontinued. The stay order does not give more than one meaning. Order 52 r 2 has been complied with and thus, the first respondent had sufficient knowledge to meet the charge.

D First and foremost, it must be emphasized that 'committal is a very serious mater. The courts must proceed very carefully before they make an order to commit to prison; and rules have been laid down to secure that the alleged contemnor knows clearly what is being alleged against him and has every opportunity to meet the allegations' (per Cross J in *Re B (JA) (An Infant)* [1965] 1 Ch 1112).

E The rules governing the application for an order of committal is provided for under O 52 of the RHC. Authorities have shown that the procedural rules must be complied with and be strictly enforced. Lord Denning MR in *McIlraith v Grady* [1968] 1 QB 468 at p 477 said:

F > ... we must remember the fundamental principle that no man's liberty is to be taken away unless every requirement of the law has been strictly complied with ... .

In *Chiltern District Council v Keane* [1985] 2 All ER 118 at p 119, Sir John Donaldson MR said:

G > ... where the liberty of the subject is involved, this court has time and time again asserted that the procedural rules applicable must be strictly complied with.

KC Vohrah J in *Sykt M Mohamed v Mahindapal Singh & Ors* [1991] 2 MLJ 112 at p 114 said:

H > ... that since committal proceedings are quasi-criminal proceedings and the liberty of the subject is involved, the procedural rules applicable must be strictly enforced.

It is also the law that the grounds on which an order of committal is sought must be set out in the statement accompanying the notice of motion (see
I O 52 r 2(2) and O 52 r 3(3)). Although there is no requirement for the notice of motion to set out the grounds, nevertheless this information must be stated in the statement with sufficient particularity to enable the person

alleged to be in contempt to meet the charge (see *Sykt M Mohamed*). The nature of the contempt must be identified and spelt out precisely. The person alleged to be in contempt must know what exactly he is said to have done or omitted to do which constitute a contempt of court (see *Chiltern District Council v Keane*).

Applying the above principles to the present case, I, with respect, agree with the respondent that the applicant has failed to comply with O 52 r 2(2) read together with O 52 r 3(3) of the RHC strictly. The statement filed by the applicant fails to set out sufficient grounds of the alleged contempt to enable the first respondent to answer the charge. The information in the statement is devoid of details in that the applicant has failed to identify precisely the proceedings in which the stay order was given. The statement filed by the applicant merely says as follows:

> Walaupun responden pertama sebagai pengurus urusan untuk responden kedua pada kesemua waktu yang material, telah diberi notis beberapa kali, termasuk notis penal di dalam Borang 87 Kaedah-Kaedah Mahkamah Tinggi 1980 yang diserahkan ke atas beliau secara persendirian, beliau telah gagal untuk mematuhi perintah Mahkamah Tinggi bertarikh 7 Mei 1996 di mana ianya menggantungkan perlaksanaan award Mahkamah Perusahaan No 65 tahun 1996 dan dengan itu telah melakukan suatu penghinaan Mahkamah yang mulia ini.

Which High Court order dated 7 May 1996 that the first respondent is alleged to have been breached? In this case, the statement accompanying the notice of motion did not identify and specify the proceeding in which the court order of 7 May 1996 was granted. The statement did not state the alleged contempt in full. To allege 'beliau telah gagal untuk mematuhi perintah Mahkamah Tinggi bertarikh 7 Mei 1996 di mana ianya menggantungkan perlaksanaan award Mahkamah Perusahaan No 65 Tahun 1996 dan dengan itu telah melakukan suatu penghinaan Mahkamah yang mulia ini' without further stating the nature of the stay order; in what manner and how the first respondent failed to comply with the stay order is, to my mind, not sufficient. The applicant did not state what the stay order required the second respondent to do, how the stay was to have been implemented and how it failed to obey. Neither did the applicant say how the first respondent was responsible or what he did or did not do or what he was required or not required to do under the stay order. These details are important for the first respondent to meet the charge. The details must be stated in full in the statement. Failure to do so would prejudice the first respondent in his defence. No doubt the notice of motion and the statement have made reference to the affidavit of Mathialaghan a/l Veraraghavam which mentioned the proceeding, but the point is that the document is a wholly separate document from the notice and the statement, and its purpose is merely to verify the facts in the statement; the affidavit cannot supply the missing grounds in the statement. Deficiencies in the statement cannot be regarded as cured by reason of references in the notice of motion and the statement to affidavits attached to or accompanying the notice and the statement (see *Harmsworth v Harmsworth* [1987] 3 All ER 816). Therefore, failure to set out sufficient grounds of the alleged contempt

A in the statement is fatal. Indeed, on this ground alone, I consider it is sufficient for the application to be dismissed.

However, there are two other grounds advanced by the respondent which, to my mind, merit consideration by the court.

On the substantive defences, the main issue is the stay order itself. In
B my judgment, the stay order dated 7 May 1996 is ambiguous and uncertain in its terms. It did not direct what had to be done. Thus, there had been no breach of the stay order by the first respondent or the second respondent which has been proved to have occurred in this case. I fully agree with the applicant that court orders must not be treated lightly, but Luxmoore J in
C *Iberian Trust Ltd v Founders Trust and Investment Co Ltd* [1932] 2 KB 87 at p 95 reminded:

> ... If the court is to punish any one for not carrying out its order the order must in unambiguous terms direct what is to be done.

At the time the stay order was made, the Rota Work System had already
D been implemented in several departments in the second respondent's factory (see exh 'JC-6' to the first respondent's affidavit dated 9 September 1997 — encl 11). The moment the second respondent received notice of the terms of the stay order, the second respondent forthwith ceased to implement the Rota Work System under the award for the remaining departments and issued a directive to the staff (see exh 'JC-6'). With
E regard to the construction of the stay order in the context it is worded, ie with the usage of the word 'selanjutnya', the stay order could be construed to take effect prospectively, ie in the future. If that is so, then the stay order cannot affect what had already been implemented in the past. Thus, the stay order gives rise to more than one meaning. Hence it is doubtful. To
F be effective the terms of the stay order must be precise and unambiguous. It has been stated that a stay order is not by its nature an injunction; neither is it mandatory in nature. If it is desired to require a person who has already implemented whether wholly or partly a decision of an inferior tribunal to reverse the implementation, then the applicant should seek an injunction and not a stay (see *Ministry of Foreign Affairs, Trade and Industry*
G *v Vehicles and supplies Ltd & Anor* [1991] 1 WLR 550 at p 556; *United Steel Workers of America v Anaconda Co (Canada) Ltd* (1969) 3 DLR (3rd) 577).

It is also the contention of the respondent that a stay order is not punishable by contempt and quoted *Ministry of Foreign Affairs* where the Privy Council on an appeal from Jamaica said (at p 556):

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> ... It is not an order enforceable by proceedings for contempt because it is not, in its nature, capable of being 'breached' by a party to the proceedings or anyone else.

My short response is that under O 45 r 5(1)(ii) and O 52 r 1(2)(a)(i) of the RHC, any director of a body corporate may be committed for contempt of
I court which is committed in connection with 'any proceedings' before the High Court. In my view, 'any proceedings' here includes a stay order proceeding and therefore, a stay order is also punishable by contempt. It is true that the applicant has obtained leave for committal from this court

earlier against the first respondent. But to find the first respondent guilty of contempt, the applicant must comply with the procedural rules strictly and prove that the first respondent had breached the stay order beyond reasonable doubt (see *Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal* [1995] 3 MLJ 549). Any defect in procedure or doubt in the proof as discussed above is fatal. Based on the affidavit evidence before the court and having regard to the submissions by both parties and with the presence of the procedural defects as pointed out earlier, I find that the applicant has failed to establish the application for committal against the first respondent beyond reasonable doubt. Accordingly, the motion is dismissed with costs.

Motion dismissed.

Reported by Jafisah Jaafar